

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

REMILEAF, LLC

Plaintiff,

v.

NATALIE M. LAPRADE MARYLAND
MEDICAL CANNABIS COMMISSION, et al.

Defendants.

Case No. 0472695-V

TEMPORARY RESTRAINING ORDER

Upon consideration of the Plaintiff's Motion for Temporary Restraining Order, the court having held a hearing, reviewed the pleadings and exhibits, and heard argument from counsel, it is this 25 day of September 2019, at 6:30 p.m. by the Circuit Court for Montgomery County,

ORDERED, that, for the reasons set out below, the Motion for Temporary Restraining Order under Maryland Rules 15-502(e) and 15-504 is GRANTED.

Background

The court finds that the Maryland Medical Cannabis Commission ("MMCC") is set to announce tomorrow, September 26, 2019, the applicants who have been pre-approved for medical cannabis growing and processing centers. Plaintiff Remileaf, LLC submitted two complete applications by the original deadline, May 24, 2019, for a grower license and a processor license, respectively. The plaintiff received electronic confirmation of its submittals on May 24, 2019.

On May 31, 2019, MMCC, by e-mail, again confirmed to the plaintiff receipt of these two applications on May 24, 2019 and accepted \$4,000.00 in application fees. The plaintiff was told by MMCC that no further action by the plaintiff was required.

However, on June 11, 2019, the MMCC, by e-mail, issued a press release informing the applicants, including the plaintiff, that their prior applications had been “nullified,” ostensibly because the software used by the MMCC was fatally flawed and the electronically submitted applications could not readily be reviewed. Other problems, as well, were identified by MMCC with the software, none of which were the fault of any applicant. The press release stated that the MMCC was “re-opening” the application process and that the same information, albeit in a different electronic format, was due to the MMCC’s office by 5:00 p.m. on June 24, 2019.

The plaintiff converted the same information it already had provided to the MMCC into the new format and attempted to present it to the MMCC office on June 24, 2019. The plaintiff arrived at the building which housed the MMCC at 4:55 p.m. on June 24, 2019. She entered the lobby of the actual MMCC office at 5:05 p.m. and was told that she was “too late” even though the plaintiff had the electronic documents required by the MMCC literally “in hand.”

The plaintiff was told at that time by the then Executive Director of the MMCC that she should “write a letter” to the MMCC. The letter was submitted on June 25, 2019, requesting the acceptance of the plaintiff’s two applications, which the MMCC already had in fact received due to the plaintiff’s May 24, 2019 submissions. By letter dated September 24, 2019, the MMCC denied the plaintiff’s request for an administrative appeal. This suit followed on September 25, 2019.

Discussion

The plaintiff seeks a temporary restraining order, precluding the MMCC from publicly announcing, or awarding any stage-one pre-approval for growers or processors licenses until the court hears and determines its request for a preliminary injunction. Under Md. Rule 15-504(a), a temporary restraining order may be issued only if the moving party demonstrates that, absent the order he will suffer “immediate, substantial and irreparable harm.” That party also must satisfy the traditional four-factor test in Maryland for the issuance of a preliminary injunction. *Fuller v. Republican Central Committee*, 444 Md. 613, 635-36 (2015).

The four factors the court must consider when weighing a request for injunctive relief are:

1. The likelihood that the plaintiff will succeed on the merits;
2. The “balance of convenience” of the parties, which is whether greater injury would result from the issuance of the injunction than from its denial;
3. Whether plaintiff will suffer irreparable injury if the injunction is denied; and
4. The public interest.

See, e.g., Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc., 396 Md. 219, 240-41 (2006); *State Comm’n v. Talbot County*, 370 Md. 115, 136 (2002); *Fogle v. H&G Restaurant, Inc.*, 337 Md. 441, 455-56 (1995); *Dep’t of Transp. v. Armacost*, 299 Md. 392, 404-05 (1984). The burden at all times is on the party seeking the injunction to prove facts necessary to sustain all of the four essential factors. *Eastside Vend*, 396 Md. at 241.


The legal test, however, is not formulaic. If there is a decided imbalance of hardship in favor of the party seeking the preliminary injunction, the likelihood of hardship factor may be

satisfied with a lesser showing of likelihood of success on the merits. *Lerner v. Lerner*, 306 Md. 771, 784 (1986) (applying the seminal decision of the Fourth Circuit in *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977)). In all cases, the party seeking the injunction must establish a real probability of prevailing on the merits, not simply a possibility of doing so. *Eastside Vend*, 396 Md. at 241.

“Preliminary injunctions are designed to maintain the status quo between parties during the course of litigation.” *Eastside Vend*, 396 Md. at 241. *See also LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 301 (2004); *Lerner*, 306 Md. at 791-93. This determination is important because a key reason to issue a preliminary injunction is to preserve the *status quo* until the matter can be adjudicated on the merits. And the *status quo* means the preservation or maintenance of the last actual, uncontested status of affairs that preceded the pending controversy. *Maloof v. State Dept. of the Env’t*, 136 Md. App. 682, 692-93 (2001); *Maryland Comm’n on Human Relations v. Downey*, 110 Md. App. 493, 516 (1996). Consequently, the destruction of the *status quo* in the absence of an injunction may constitute “irreparable injury in the context of preliminary injunctions.” *Lerner*, 306 Md. at 791.

The court is persuaded that the plaintiff will suffer immediate, substantial and irreparable harm if relief is not granted because it will be precluded, despite its substantial investment and substantial compliance with the MMCC’s requirements, from being considered by the Commission for either type of cannabis license for the foreseeable future, through no substantive fault of its own. It submitted full and complete applications in the manner requested by the MMCC on May 24, 2019. The MMCC refuses to evaluate them only because they were not “re-submitted” in a different electronic format by 5:00 p.m. on June 25, 2019.

The plaintiff has shown a fair chance of prevailing on the merits of its claims, having raised serious and substantial problems regarding the bidding process and its administration by the MMCC, and the seeming irregularity of the procedures employed. The balance of convenience weighs in its favor. The number of licenses is limited by statute. If relief is not granted, the plaintiff will not receive pre-approval for, much less an actual license, to grow or to sell medical cannabis in Maryland. The public may very well be deprived of the best possible provider.

 The submission problems were the result, it seems, on poor software vendor choices by the MMCC, and not due to any deficiencies in the substantive data submitted by the plaintiff. The MMCC seems to have exceeded its authority in “nullifying” the plaintiff’s May 2019 submissions. The harm to the MMCC, the public or other bidders in a brief delay in the availability of additional medical marijuana in the State of Maryland is, in my judgment, slight. The plaintiff promptly sought administrative relief and was not formally rebuffed by the MMCC until yesterday. The MMCC is unlikely to prevail on the affirmative defense of laches.

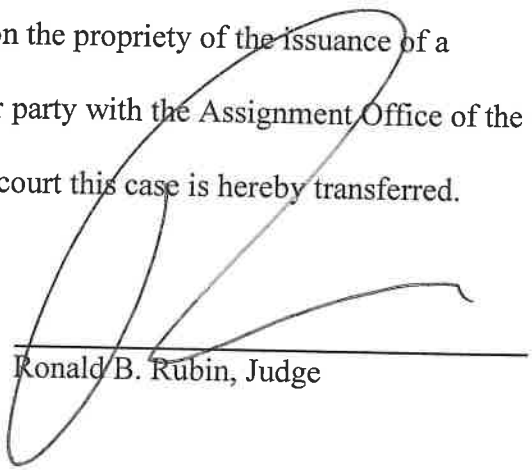
ORDERED, that the Defendant is prohibited from announcing or awarding any stage-one pre-approval license for growers or processors of medical cannabis in Maryland, pending further order of court; and it is further.

ORDERED, that any party affected by this Temporary Restraining Order may apply for a modification or dissolution of this Temporary Restraining Order on two days notice, or other time as the Court may prescribe; and it is further

ORDERED, that the Plaintiff file a cash bond with the Registry of the Court in the amount of \$500.00, no later than 2:00 p.m. on September 27, 2019; and it is further

ORDERED, that this Temporary Restraining Order expires at 6:00 p.m. on October 7, 2019, unless further extended by order of this Court or agreement of the parties; and it is further

ORDERED, that a full adversary hearing on the propriety of the issuance of a Preliminary Injunction may be scheduled by either party with the Assignment Office of the Circuit Court for Anne Arundel County, to which court this case is hereby transferred.



Ronald B. Rubin, Judge